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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,456	03/01/2004	David S. Goldfarb	176/61481 (1-11027-03034)	9599
Edwin V. Merkel Nixon Peabody LLP Clinton Square P.O. Box 31051 Rochester, NY 14603-1051				
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EXAMINER VOGEL, NANCY TREPTOW				
ART UNIT		PAPER NUMBER		
1636				
MAIL DATE		DELIVERY MODE		
10/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/790,456

Applicant(s)

GOLDFARB, DAVID S.

Examiner

NANCY VOGEL

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 5-10, 12, 16-24, 26-28 and 59-74 is/are pending in the application.
- 4a) Of the above claim(s) 25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 63 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-10, 2, 16-24, 27, 28, 59-62, 64-70, 72-74 is/are rejected.
- 7) ☒ Claim(s) 26 and 71 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1, 3, 5-10, 12, 16-58, 59-74 are pending in the case.

Election/Restrictions

Claims 24 and 25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/2/06.

This application contains claims drawn to an invention nonelected with traverse in the reply filed on 10/2/06. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any rejection of record in the previous action not addressed in this office action is withdrawn.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 12, 19-22 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Guarente et al. (US Patent 5,874,21).

This rejection is maintained essentially for the reasons made of record in the previous Office action, mailed 8/9/07.

Applicant's arguments filed 2/11/08 have been considered but have not been found convincing.

Applicants have argued that Guarente does not teach culturing the control cell cultures and one or more test cell cultures on a growth medium that allows mother yeast cells to replicate but not daughter yeast cells (page 10 of response). However, it is maintained that Guarente does teach culturing cells on a medium that is at a particular temperature. Giving the claims the broadest reasonable interpretation, this constitutes culturing on a growth medium that allows mother yeast to replicate but not daughter cells. Therefore the rejection is maintained.

Claims 1, 3, 5-10, 16, 19-20, 22, 59-62, 64, 70 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Jarolim et al. (1st International Meeting on Yeast Apoptosis, Braga, Portugal, Meeting Abstract, page 1-2, October 4-6, 2002; IDS Ref. #2) as evidenced by Jarolim et al. (FEMS Yeast Research 5:169-177, 2004).

This rejection is maintained essentially for the reasons set forth in the Office action mailed 8/9/07. Applicant's arguments filed 2/11/08 have been considered but have not been found to be convincing.

Applicants argue that Jarolim II is not available as prior art. However, this reference was cited for evidence purposes only. Applicant further argues that Jarolim I teaches treating yeast with a pro-oxidant, and environmental stimulus, that induces damage to exposed cells. However, the Examiner cannot find such treatment in Jarolim I and applicants has not pointed to a section of Jarolim I that teaches such treatment. Furthermore, the claims as amended do not recite pro-oxidant. Furthermore, applicant

argues that Jarolim I fails to teach or suggest using the assay to identify whether a genotype modification alters the lifespan of an organism. However, as was previously stated in the rejection of 8/9/07, Jarolim I teach that optical density determination reliably correlated with lifespan, and determining whether the mother yeast cells in the test cell culture exhibit a change in replicative lifespan when compared to the mother yeast cells in the control cell culture would indicate that the genotype modification increases the replicative lifespan of the organism exposed to said modification. Therefore, the rejection is maintained.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 5-10, 16-20, 22, 59-62, 64-68, 70 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarolim et al. (1st International Meeting on Yeast Apoptosis, Braga, Portugal, Meeting Abstract, page 1-2, October 4-6, 2002; IDS Ref. #2) as evidenced by Jarolim et al. (FEMS Yeast Research 5:169-177, 2004) in view of Bradley et al. (US Patent 6,531,289).

This rejection is maintained essentially for the reasons set forth in the Office action mailed 8/9/07. Applicant's arguments filed 2/11/08 have been considered but have not been found to be convincing.

Applicants have argued that because of the deficiencies of Jarolim I/II, this rejection is improper and should be withdrawn. However, for the reasons set forth

above, applicant's arguments regarding Jarolim I/II are not found convincing.

Therefore, the present rejection is maintained.

Claims 1, 3, 5-10, 16-20, 22, 27-28, 59-62, 64- 68, 70 and 72-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarolim et al. (1st International Meeting on Yeast Apoptosis, Braga, Portugal, Meeting Abstract, page 1-2, October 4-6, 2002; IDS Ref. #2) as evidenced by Jarolim et al. (FEMS Yeast Research 5:169-177, 2004) in view of Bradley et al. (US Patent 6,531,289), And further in view of Fisher et al. (US Patent 6,200,746).

This rejection is maintained essentially for the reasons set forth in the Office action mailed 8/9/07. Applicant's arguments filed 2/11/08 have been considered but have not been found to be convincing.

Applicants have argued that because of the deficiencies of Jarolim I/II, this rejection is improper and should be withdrawn. However, for the reasons set forth above, applicant's arguments regarding Jarolim I/II are not found convincing. Therefore, the present rejection is maintained.

Claims 1, 3, 5-10, 16, 19-22, 59-62, 64, 67-70 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarolim et al. (1st International Meeting on Yeast Apoptosis, Braga, Portugal, Meeting Abstract, page 1-2, October 4-6, 2002; IDS Ref. #2) as evidenced by Jarolim et al. (FEMS Yeast Research 5:169-177, 2004) in view of Guarente et al.

This rejection is maintained essentially for the reasons set forth in the Office action mailed 8/9/07. Applicant's arguments filed 2/11/08 have been considered but have not been found to be convincing.

Applicants have argued that because of the deficiencies of Jarolim I/II, this rejection is improper and should be withdrawn. However, for the reasons set forth above, applicant's arguments regarding Jarolim I/II are not found convincing. Therefore, the present rejection is maintained.

Allowable Subject Matter

Claim 63 is allowed.

Claim 26 and 71 remain objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It is noted that the claim on which claim 26 depends, claim 59, is still under rejection, and claim 26 has not been amended, and therefore the objection is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANCY VOGEL whose telephone number is (571)272-0780. The examiner can normally be reached on 7:00 - 3:30, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NANCY VOGEL/
Primary Examiner, Art Unit 1636

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9/19/08